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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,009	04/28/2005	Mirza Kamran Baig	1926-00105	1704
26753 7590 11/13/2008 ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202				
EXAMINER				
RYCKMAN, MELISSA K				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
11/13/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,009

Applicant(s)

BAIG, MIRZA KAMRAN

Examiner

MELISSA RYCKMAN

Art Unit

3773

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE-US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/28/08 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-24 and 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Schatz (U.S. Patent No. 5,868,753).

Regarding Claim 16, Schatz teaches a device for retrieval of a foreign body from a vessel of a patient, said device comprising: a flexibly resilient central shaft (60) having an axial channel capable of receiving a guidewire therein (28); balloon (58) support means (56) fixed to and extending from said central shaft and having a free end spaced therefrom (fig.10); and inflatable balloon means (col. 5, ll. 10-12) provided at said free end and arranged to expand inwardly towards said central shaft upon inflation (fig. 10); whereby in use said device is positioned such that a foreign body to be retrieved is

located between said free end and said central shaft, and said balloon means is subsequently inflated to bear against the foreign body and hold it against said central shaft (col. 5, ll. 17), such that the combined foreign body and device can be withdrawn from the vessel (col. 5).

Regarding Claim 17, Schatz teaches the device as claimed in claim 16, wherein the foreign body is an undeployed stent (col. 5, ll. 15); and whereby in use said balloon means is inflated to bear against the outer circumference of the stent and hold the stent against said central shaft (col. 5, ll. 15).

Regarding Claim 18, Schatz teaches the device as claimed in claim 17, wherein said inflatable balloon means (58) is arranged so as in use to bear against the stent at two or more spaced locations around the circumference thereof (58 and 44, col. 5, ll. 10-12).

Regarding Claim 19, Schatz teaches the device as claimed in claim 16, wherein said central shaft (60) is flexibly resilient and has a tip extending beyond said free end of said balloon support means (fig. 10, distal end of 58).

Regarding Claim 20, Schatz teaches the device as claimed in claim 16, wherein said inflatable balloon means (58) is generally annular (fig. 7-10).

Regarding Claim 21, Schatz teaches the device as claimed in claim 16, wherein said balloon support means (fig. 10, distal end of 58) is a generally cylindrical sleeve extending axially of the central shaft (Fig. 10).

Regarding Claim 22, Schatz teaches the device as claimed in claim 19, wherein said central shaft (60) is generally cylindrical, having a uniform diameter along most of

its length (fig. 1), and a short tapering section towards its tip (Fig. 10, rounded tip is tapered, near element 58).

Regarding Claim 23, Schatz teaches the device as claimed in claim 16, further comprising a hub (24) at an end of said central shaft (22) distal from said inflatable balloon means (26).

Regarding Claim 24, Schatz teaches the device as claimed in claim 23, wherein said hub has a port (44 and 58 inherently have a port connected to 26) in fluid communication with said inflatable balloon means (26) to enable inflation thereof by injection of an inflation fluid.

Regarding Claim 28, Schatz teaches the device as claimed in claim 16, said device being adapted for delivery into and recovery from a vessel by means of a guiding catheter (Fig. 1).

Regarding Claim 29, Schatz teaches the device as claimed in claim 16, further comprising a guiding catheter for delivery of said device into a vessel, and subsequent recovery of said device therefrom (col. 5).

Regarding Claim 30, Schatz teaches a device for retrieval of an undeployed stent from a vessel of a patient, which device comprises: a central shaft (60) having an axial channel for receiving an angioplasty guidewire therein; balloon support means (58) fixed to and extending from said central shaft and having a free end (distal end of 58) spaced therefrom; and inflatable balloon means (58) provided at said free end and arranged to expand inwardly towards said central shaft upon inflation; whereby in use the device is positioned such that an undeployed stent is located between said free end and said

central shaft (col. 5, ll. 10-20), and said balloon means is subsequently inflated to bear against the outer circumference of the stent and hold the stent against said central shaft, such that the combined stent and device can be withdrawn from the vessel (col. 10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schatz in view of Bosley Jr. (US 4930496)

Schatz teaches all limitations of preceding claims 16, 23 and 24, but fails to teach wherein said port is adapted to receive a syringe from which the inflation fluid is to be delivered. Bosley Jr. teaches an intraluminal catheter for inflating a balloon, wherein the device includes a hub designed to be connected to an appropriate inflation fluid which may be contained within a syringe so that the fluid may be injected into and removed from the balloon to allow for selective inflation and deflation of the balloon.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Schatz with a hub designed to be connected to an appropriate inflation fluid which may be contained within a syringe as taught by Bosley Jr. so that the fluid may be injected into and removed from the balloon to allow for selective inflation and deflation of the balloon.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schatz in view of Tsugita et al. (US 5910154).

Schatz teaches all limitations of preceding claims 16, 23 and 24, but fails to teach wherein said inflation fluid is of radiographic contrast. Tsugita teaches an intraluminal catheter for inflating a balloon, wherein the said inflation fluid is of radiographic contrast in order to allow the surgeon to accurately image the device during use.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Schatz with radiographic contrasting inflation fluid as taught by Tsugita in order to allow the surgeon to accurately image the device during use.

Claim 27 rejected under 35 U.S.C. 103(a) as being unpatentable over Schatz. Schatz teaches all limitations of preceding dependent claims 16, 23 and 24, but fails to teach wherein inflation of said inflatable balloon means is effected by the injection of a volume of inflation fluid in the range of from 2 to 5 ml. The device of Schatz performs the same function as that of the present application in the same manner, and further discloses inflating the inflation members sufficiently to grip the stent structure. Since applicant has not disclosed that this specific range provides any advantage over any other workable ranges, it would have been obvious to one of ordinary skill in the art at the time the invention was made to disclose the volume of inflation fluid to be in the range from 2 to 5 ml since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233

Response to Arguments

Applicant's arguments with respect to claims 1-24 and 28-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA RYCKMAN whose telephone number is (571)272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR
/Melissa Ryckman/
Examiner, Art Unit 3773

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773